IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1767 OF 1989

Vasant Jobanputra ... Petitioner

versus

1. Bank of India Staff
Sampada Co-operative
Housing Society Limited;
2. M.B. Tribhuvan, Deputy
Registrar, Co-operative
Societies, Bombay;
3. State of Maharashtra;
4. Bharati Vasani;
5. Shalaka Co-operative
Housing Society Limited. ... Respondents

...

Mr. R.V. Govilkar, for the Petitioner.

Mr. Prakash Shinde holding for Mr. Gabriel Pillai, for Respondent No. 1 and 5.

Mr. K.G. Waingankar, for Respondent No. 4.

...

CORAM : A.M.KHANWILKAR,J.

3rd September 2004

ORAL JUDGMENT :

1. This writ petition takes exception to the recovery certificate issued by the Deputy Registrar, Co-operative Societies, against the Petitioner at the instance of the Respondent Society dated March 18, 1989. The Respondent Society had applied to the Deputy Registrar for issuance of recovery certificate on the assertion that the Petitioner was in arrears of certain demands and outgoings of the Respondent Society towards the maintenance and service charges, non-occupational charges and balance cost of construction along with interest accrued thereon. The said proceedings were resisted by the Petitioner by contesting the demand as made being inflated and not realistic. The Deputy Registrar, on analysing the materials on record, has accepted the claim of the Respondent Society that the Petitioner was liable to pay amount towards maintenance and service charges from September 1983 to June 1987 of Rs.14,348.00 and interest accrued thereon of Rs.1366.53 at the

rate of 6 per cent. per annum upto June 1987 and further amount towards non-occupational charges from September 1983 to June 1987 being Rs.36,202.00 and interest accrued thereon from October 1983 to June 1987 being Rs.4,036.50. In addition, the Petitioner was held liable to pay to the Society amount towards balance cost of construction being Rs.54,797.00 and interest accrued thereon at the rate of 15 per cent. per annum from October 1983 to June 1987 being Rs.30,823.31. The total amount for which recovery certificate under section 101 of the Maharashtra Co-operative Societies Act has been issued against the Petitioner on 18th March 1989 is for Rs.1,41,573.34 Ps. The Petitioner could have challenged this recovery certificate by way of revision application under section 154 of the Act, but, instead, chose to file the present writ petition. Be that as it may, in the present writ petition, grievance made on behalf of the Petitioner, as was canvassed by Mr. Govilkar across the Bar, is that the Respondent Society could not have taken recourse to recovery proceedings under section 101 of the Act in respect of the said amounts as, there was dispute

regarding the correctness of the claim. It was argued that on the same cause of action, the Respondent Society has already instituted dispute under section 91 of the Act, which was still pending for consideration. It was argued that the Respondent Society cannot take recourse to two different remedies for the same relief. On that basis, it was contended that the present proceedings will have to be thrown out, because the Respondent Society has already taken recourse to remedy of dispute under section 91 of the Act. This is the only grievance made across the Bar in the present writ petition.

2. It may, however, be placed on record that initially Mr. Govilkar for the Petitioner fairly conceded that insofar as relief (a) is concerned, the same need not be considered, as the challenge to the validity of section 101 of the Act has already been negated by this Court in the unreported decision in Writ Petition No. 3489 of 2002 decided on June 11, 2003 in the case of M/s Annapurna Engineering Corporation v. State of Maharashtra and another. He, therefore, modified his arguments and restricted the same to the

extent already indicated above. However, relying on the observations in the same judgment in para 9, Mr. Govilkar had contended that once the Respondent Society had invoked remedy under section 91 of the Act, it was not open to the Respondent Society to pursue remedy under section 101 of the Act. It is this limited grievance that needs to be addressed to in the present writ petition.

3. Having considered the rival submissions and after going through the pleadings and the record of the case with the assistance of the Counsel appearing for the parties, I have no hesitation in rejecting the argument canvassed on behalf of the Petitioner before this Court. The argument clearly overlooks that the relief claimed in the dispute filed under section 91 of the Act are entirely different. The same read thus :

> "(a) The dispute be adjudicated in terms of Section 91 to Section 96 of the Maharashtra Co-operative Societies Act, 1960.

b) The Opponents No. 2 and 3 by themselves, their family members, agents and servants be ordered to quit, vacate and handover peaceful possession of flat No.C/103 in Unit No. II of the Disputant No.1-A Society situated at Shalaka Co-op.Housing Society Ltd., C.T.S. No.689/689-1 to 17, at Teligali Cross Road, S.N.Marg, Andheri (East), Bombay-400 069.

c) The Opponent No. 1 by himself, his family members, his servants and agents be ordered to quit, vacate and handover peaceful possession of flat No.B/40 in Unit No. 1 of the buildings of the Disputants Society situated at Teligali Cross Road, S.N. Marg, Andheri(East), Bombay-400 069 to the Disputant No.1 Society.

d) The Opponent No. 1 be further directed to personally use and occupy flat No. C-103 in the buildings of the

said Disputant No.1-A Society in accordance with its Bye-laws and Resolutions and decision of the General Body of the Disputant No.1 Society after surrendering flat No.B/40 in the building of Disputant No. 1 Society to Disputant and after he is admitted as a member of Disputant No. 1A Society.

e) That pending the hearing and final disposal of the dispute, the Opponents by themselves, their agents and servants be restrained by an injunction and order of this Hon'ble Court from parting with possession of flat No. B/40 in Unit No. 1 of Disputant No. 1 and flat No. C/103 in Unit No. II of the Disputant Society No. 1A and/or creating any 3rd party rights in respect thereof in any manner whatsoever.

f) Ad-interim injunction in terms of prayer (e) hereinabove.

g) Cost of these proceedings be ordered

to be paid by the Opponents; and

h) Such other and further reliefs be granted as may appear just and proper in the nature and circumstances of the case."

4. No relief has been claimed even remotely, for recovery of the outstanding dues payable by the Petitioner to the Respondent Society. On the other hand, in the present proceedings under section 101 of the Act, that is the only relief claimed and has been granted by the authority below on the basis of the evidence adduced before it on record. To get over this position, Mr. Govilkar contends that although the relief claimed in the dispute is one of directing the Petitioner to hand over vacant and peaceful possession of the disputed property, but the same is founded on the allegation that the Petitioner is defaulter in relation to the cost of construction. There is no substance in this submission. Inasmuch as, that is the ground on which the Respondent Society has initiated action for recovery of possession of the disputed

premises from the Petitioner. Indeed, in the said dispute, the Petitioner in his written statement has questioned the correctness or justness of the claim set up by the Respondent Society regarding the balance cost of construction. On that basis, I am told that issue has also been framed as to whether the demand of the Society under that head is appropriate. I am also told that parties have adduced evidence with regard to that issue in the said dispute. (Those proceedings have not been produced before me). Even so, the fact remains that the reliefs claimed in the dispute are entirely different. If the Society fails to establish the appropriateness of the claim set up by it against the Petitioner, in that case, the Respondent Society may fail to get the relief claimed in the dispute, but that does not mean that the Respondent Society is claiming for the same relief, which has been claimed in the recovery proceedings under section 101 of the Act, which is the subject matter in the present writ petition. Viewed in this perspective, it is not possible to accept the grievance of the Petitioner. Inasmuch as merely because the

Respondent Society has instituted dispute under section 91 of the Act, which incidentally refers to the item of balance cost of construction, which also finds place in the recovery certificate issued by the Deputy Registrar at the instance of the Respondent Society, that by itself, cannot be the basis to hold that remedy under section 101 of the Act was unavailable to the Respondent Society or that the Deputy Registrar had no jurisdiction to entertain and finally decide the same, as sought to be contended before this Court. This view is reinforced also by the non-obstante clause in Section 101 of the Act. For, remedy under Section 101 of the Act is notwithstanding anything contained, inter alia, in Section 91 of the Act. In the light of the above, the observations of our High Court in Annapurna's case (supra) pressed into service by the Petitioner are of no avail in the fact situation of the present case. Accordingly, submission canvassed on behalf of the Petitioner will have to be stated to be rejected.

5. It is necessary to place on record that

during the course of arguments, Mr. Govilkar has plainly conceded on instructions of the Petitioner that insofar as item Nos. 1 and 2 of the recovery certificate regarding maintenance and service charges and interest accrued thereon are concerned, the correctness of that is not questioned by the Petitioner. The only grievance was with regard to the correctness of the claim of the Respondent Society under the head of non-occupational charges being item No. 3 and interest accrued thereon, being item No. 4; and in respect of the amount specified as balance cost of construction being item No. 5, and interest accrued thereon, being item No. 6. Mr. Govilkar, however, was not in a position to demonstrate as to how the claim of the Respondent Society towards non-occupational charges being sum of Rs.36,202/- was inappropriate. On the other hand, the Respondent Society has placed reliance on the resolution passed by the Society that the concerned member will be obliged to pay non-occupational charges to the society. The amount has been specified in the said resolution. The said resolution has not been challenged, but the amount specified in that resolution is tried

to be questioned as unjust at the instance of the Petitioner in the present proceedings. That course is not open, so long as the resolution operates and remains in the field. The said resolution was applicable to all the members of society uniformly. It is not the case of the Petitioner that the Petitioner has taken steps to challenge the said resolution. The said resolution was placed before the Deputy Registrar and it is on that basis, the Deputy Registrar found that the claim set up under the head of non-occupational charges was duly supported by the relevant documents, namely, resolution passed by the Society and the demand raised by the Society qua the Petitioner in that behalf coupled with the fact that the Petitioner failed to pay the said amount. So understood, the Deputy Registrar being the recovery officer had no option but to issue certificate under section 101 of the Act.

6. Insofar as the claim of the Respondent Society regarding balance cost of construction is concerned, even that is supported by the resolution of the Respondent Society, which is

uniformly applicable to all the members, followed by demand made by the society and not fulfilled by the Petitioner. The said documents were placed before the Deputy Registrar and the Deputy Registrar has accepted the claim of the Respondent Society being substantiated by the relevant resolution and the demands raised by the Society, which remained unfulfilled. It is not open to the Deputy Registrar, who is obliged to issue recovery certificate, to go into the justness or appropriateness of the claim made by the Respondent Society, which is founded on resolution of the society authorising such demand. That officer cannot proceed to hold that the demand made by the Society, is inappropriate, inspite of the demand being supported by the resolutions, which are binding on the members of the society - having remained unchallenged. Whereas the recovery certificate is required to be issued on the basis of the resolution passed by the Society either by the managing committee or by the general body followed by the demand made by the Society on the basis of such resolution and the fact that the demand remaining unfulfilled. No other aspect can be gone into by

the officer who is only called upon to issue recovery certificate. This position is reinforced by the language of section 101(1) of the Act, which provides that on the society concerned furnishing a statement of accounts in respect of the arrears, the Registrar may after making such enquiry as he deems fit grant certificate for the recovery of amount stated therein to be due as arrears. Mr. Govilkar, however, contends that in view of the expansive language in section 101 of the Act, that "the Registrar has to make such enquiries", would authorise the Registrar to examine whether the claim of the Society is just and legal, supported by resolutions though. It is not possible to accept this submission. So long as the resolution passed by the managing committee, or, for that matter, general body, operates, the member will be bound by the said resolution, until that resolution is set aside by the appropriate forum. In the present case, the demand is founded on resolutions passed by the Society (which have remained unchallenged) followed by demand made by the Society and the demand remaining unfulfilled. The amount

demanded by the Respondent Society is also indicated in the statement of accounts of the Society and it is on that basis the recovery certificate has been issued by the Registrar. A priori, no fault can be found with the certificate as issued by the Registrar, which is supported by the documents on record. Indeed, the proceedings under section 101 of the Act before the Registrar are quasi judicial in nature, but that does not mean that the Registrar is expected to engage in the process of long drawn reasoning or analysis of each aspect or argument. It is enough if that authority broadly considers the main issue as to whether the concerned member is in arrears and to what extent and whether the claim of arrears of the society is substantiated from the contemporaneous record. That has been done in the present case. Viewed in this perspective, there is no substance in this petition, and the grievance as made before this Court, as is mentioned earlier, being untenable, the petition ought to fail and the same is, therefore, dismissed with costs. Rule discharged on the above terms.

. Certified copy expedited.

(A.M.KHANWILKAR,J.)